

SCW/db
006-339

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X Civil Action No.: 10-5135
LINDA COVERT and CHAD COVERT,

Plaintiffs,

-against-

VERIFIED ANSWER

GARY D. GOLDBERG, M.D., KAREN B. HILLER,
R.N., M.S.N, A.N.P. and UROLOGY ASSOCIATES, P.C.

Defendants.

-----X

Defendants, GARY D. GOLDBERG, M.D. and UROLOGY ASSOCIATES, P.C., by
their attorneys, KELLER, O'REILLY & WATSON, P.C., answering the complaint of the
plaintiff herein, state as follows:

FIRST: Deny any knowledge or information thereof sufficient to form a belief as
to the allegations contained in paragraphs designated "5", "6", "9", "10" and "33".

SECOND: Deny each and every allegation contained in paragraphs designated "1",
"2", "13", "15", "20", "21", "22", "23", "24", "26", "27", "28", "29", "30", "31", "34" and "35".

THIRD: Deny each and every allegation contained in paragraphs designated "3",
"4", "11", "12", "16", "17", "18" and "19" in the form alleged and leaves all questions of law to
the court, and questions of fact to the trier of fact.

FOURTH: Deny each and every allegation contained in paragraphs designated "7",
in the form alleged and leaves all questions of law to the court, and questions of fact to the trier
of fact, except admits that Dr. Goldberg was and is a physician licensed to practice medicine in
New York State.

FIFTH: Deny each and every allegation contained in paragraphs designated "8", in the form alleged and leaves all questions of law to the court, and questions of fact to the trier of fact, except admits that Dr. Goldberg practices urology.

SIXTH: Deny each and every allegation contained in paragraphs designated "14 ", in the form alleged and leaves all questions of law to the court, and questions of fact to the trier of fact, except admit that in May of 2008, defendant Hiller was an employee of Urology Associates, P.C. and that defendant Hiller was last employed by Urology Associates, P.C. in approximately September of 2009.

SEVENTH: With respect to the paragraphs of the Complaint designated as "25" and "32" defendants repeat and reiterate above denials for paragraphs designated "1" through "31".

**AS AND FOR A FIRST, SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
IN THE COMPLAINT, ANSWERING DEFENDANTS ALLEGE,
UPON INFORMATION AND BELIEF:**

EIGHTH: The alleged cause of action sounding in medical malpractice is barred by the Statute of Limitations in that the plaintiff failed to bring this action within two and one-half (2 1/2) years as set forth in §214 of the CPLR.

**AS AND FOR A SECOND, SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
IN THE COMPLAINT, ANSWERING DEFENDANTS ALLEGE,
UPON INFORMATION AND BELIEF:**

NINTH: Upon information and belief, the injury sustained by the plaintiff(s) were not as the result of any culpable conduct of the defendant(s) herein, or in the alternative, the amount of damages otherwise recoverable shall be diminished in the percentage proportion of the

culpable conduct of the plaintiff(s) which contributed to the culpable conduct that caused the injury.

**AS AND FOR A THIRD, SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
IN THE COMPLAINT, ANSWERING DEFENDANTS ALLEGE,
UPON INFORMATION AND BELIEF:**

TENTH: Upon information and belief, any damages sustained by the plaintiff(s) were caused in whole or in part by the culpable conduct of the plaintiffs and/or damages were aggravated by the culpable conduct of the plaintiff(s).

**AS AND FOR A FOURTH, SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
IN THE COMPLAINT, ANSWERING DEFENDANTS ALLEGE,
UPON INFORMATION AND BELIEF:**

ELEVENTH: In the event plaintiff recovers a verdict or judgment against the answering defendants, then said verdict or judgment must be reduced pursuant to CPLR 4545(a) by those amounts which have been or will, with reasonable certainty, be paid on behalf of or will indemnify plaintiffs in whole or in part, for any past or future claimed economic loss, from any and all collateral source including but not limited to no-fault, insurance, social security, workers' compensation or employee benefit programs.

**AS AND FOR A FIFTH, SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
IN THE COMPLAINT, ANSWERING DEFENDANTS ALLEGE,
UPON INFORMATION AND BELIEF:**

TWELFTH: In the event plaintiff recovers a verdict or judgment against the answering third-party defendant, then said verdict or judgment must be reduced pursuant to CPLR §4545(c) by those amounts which have been or will, with reasonable certainty, be paid on behalf of or will indemnify plaintiff in whole or in part for any past or future claimed economic loss from any and

all collateral source, including, but not limited to, no-fault insurance, Social Security, Workers' Compensation or employee benefit programs.

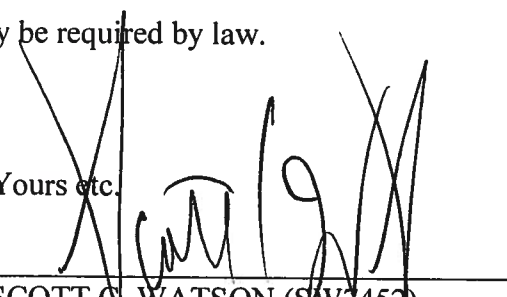
**AS AND FOR A FIFTH, SEPARATE AND COMPLETE
AFFIRMATIVE DEFENSE TO THE CAUSES OF ACTION
IN THE COMPLAINT, ANSWERING DEFENDANTS ALLEGE,
UPON INFORMATION AND BELIEF:**

THIRTEENTH: These defendants will rely upon the provisions of Article 16 of the CPLR with regard to the limitation of joint and several liability.

WHEREFORE, defendants, GARY D. GOLDBERG, M.D. and UROLOGY ASSOCIATES, P.C., demand judgment dismissing the Complaint herein together with interest, costs, disbursements or judgment over, as may be required by law.

Dated: Woodbury, New York
January 10, 2011

Yours etc.


SCOTT O. WATSON (SW7452)
KELLER, O'REILLY & WATSON, P.C.
Attorneys for Defendants
GARY D. GOLDBERG, M.D., and
UROLOGY ASSOCIATES, P.C.
242 Crossways Park West
Woodbury, New York 11797
(516) 496-1919

TO:

GOLDSMITH, CTORIDES & RODRIQUEZ, LLP.
Attorneys for Plaintiffs
747 Third Avenue, 37th Floor
New York, New York 10017
(212) 421-5500

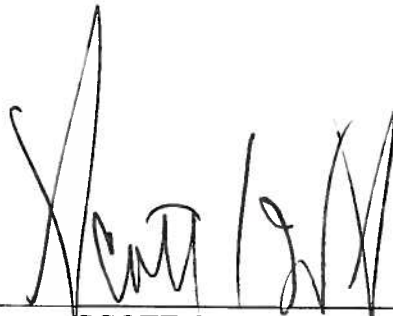
LOCKS LAW FIRM, PLLC
Co-Counsel for Plaintiffs
747 Third Avenue, 37th Floor
New York, New York 10017
(212) 838-3333

VERIFICATION

SCOTT C. WATSON, an attorney admitted to practice in the courts of the State of New York, hereby affirms as true under all penalties of perjury that I am an attorney of record for defendants GARY D. GOLDBERG, M.D. and UROLOGY ASSOCIATES in the within action; that I have read the foregoing **VERIFIED ANSWER**, and know the contents thereof; the same is true to my knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters I believe it to be true.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows: by a file maintained in my office.

Dated: Woodbury, New York
January 10, 2011


A handwritten signature in black ink, appearing to read 'Scott C. Watson', is written over a horizontal line. The signature is stylized with large, sweeping strokes.

SCOTT C. WATSON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X Civil Action No.: 10-5135
LINDA COVERT and CHAD COVERT,

Plaintiffs,

-against-

JURY DEMAND

GARY D. GOLDBERG, M.D., KAREN HILLER,
R.N., M.S.N, A.N.P. and UROLOGY ASSOCIATES, P.C.

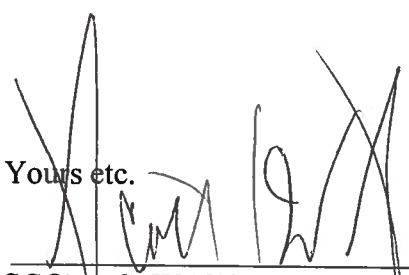
Defendants.
-----X

SIRS:

PLEASE TAKE NOTICE, that the undersigned demands a trial by jury composed of six
(6) persons in the above-entitled action.

Dated: Woodbury, New York
January 10, 2011

Yours etc.


SCOTT C. WATSON (SW7452)
KELLER, O'REILLY & WATSON, P.C.
Attorneys for Defendants
GARY D. GOLDBERG, M.D., and
UROLOGY ASSOCIATES, P.C.
242 Crossways Park West
Woodbury, New York 11797
(516) 496-1919

TO:

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(212) 421-5500

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X Civil Action No.: 10-5135
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Plaintiffs,

-against-

**RULE 50.1 c
DISCLOSURE
RESPONSE**

GARY D. GOLDBERG, M.D., KAREN HILLER,
R.N., M.S.N, A.N.P. and UROLOGY ASSOCIATES, P.C.

Defendants.
-----X

PLEASE TAKE NOTICE, that Defendants, GARY D. GOLDBERG, M.D. and UROLOGY ASSOCIATES, by their attorneys, Keller, O'Reilly & Watson, P.C., hereby responds to the Eastern District Local Federal Rules of Civil Procedure 50.1 (c) disclosure, Disclosure of Interested Parties, as follows:


To enable judges and magistrates to evaluate possible disqualification or recusal, counsel for a private (non-governmental) party shall submit at the time of initial pleading a certificate identifying any corporate parent, subsidies, or affiliates of that party.

Answer: None known at this time.

Responding defendants reserves the right to amend and/or supplement the above discovery responses up until the time of the trial.

Dated: Woodbury, New York
January 10, 2011

Yours/etc.



SCOTT C. WATSON (SW7452)
KELLER, O'REILLY & WATSON, P.C.
Attorneys for Defendants

GARY D. GOLDBERG, M.D., and
UROLOGY ASSOCIATES
242 Crossways Park West
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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-against-

**NOTICE PURSUANT TO CPLR
2103 (5) (SERVICE VIA FAX)**

GARY D. GOLDBERG, M.D., KAREN B. HILLER,
R.N., M.S.N, A.N.P. and UROLOGY ASSOCIATES, P.C.

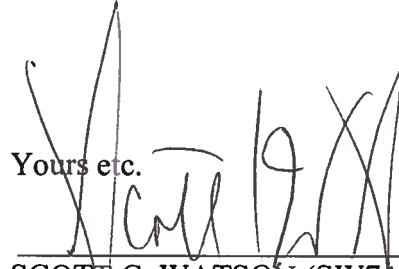
Defendants.
-----X

S I R S :

PLEASE BE ADVISED that the defendant(s) herein objects to service of papers via
electronic means.

Dated: Woodbury, New York
January 10, 2011

Yours etc.


SCOTT C. WATSON (SW7452)
KELLER, O'REILLY & WATSON, P.C.
Attorneys for Defendants
GARY D. GOLDBERG, M.D., and
UROLOGY ASSOCIATES, P.C.
242 Crossways Park West
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TO:
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Attorneys for Plaintiffs
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LOCKS LAW FIRM, PLLC
Co-Counsel for Plaintiffs
747 Third Avenue, 37th Floor
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(212) 838-3333

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
)ss:
COUNTY OF NASSAU)

I, Diane Buondelmonte, being duly sworn, says: I am not a party to the action, am over 18 years of age and reside in Nassau County, New York.

On January 11, 2011, I served the within **Verified Answer, Jury Demand, Rule 50.1 c Disclosure Response and Notice Pursuant to CPLR 2103(5) (Service via Fax)** upon the following:

GOLDSMITH, CTORIDES & RODRIQUEZ, LLP.

Attorneys for Plaintiffs
747 Third Avenue, 37th Floor
New York, New York 10017

LOCKS LAW FIRM, PLLC

Co-Counsel for Plaintiffs
747 Third Avenue, 37th Floor
New York, New York 10017

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the above-named persons at the last known address set forth after each name.


Diane Buondelmonte

Sworn to before me this
11th day of January, 2011.


Notary Public

JEANNINE M. DePIERRO
Notary Public, State of New York
No. 30-4858862
Qualified in Nassau County
Commission Expires May 19, 2014

Index No.: 10-5135
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

LINDA COVERT and CHAD COVERT,

Plaintiffs,

-against-

GARY D. GOLDBERG, M.D., KAREN B. HILLER, R.N.,
M.S.N., A.N.P. and UROLOGY ASSOCIATES, P.C.

Defendants.

**Verified Answer, Jury Demand, Rule 50.1 c Disclosure Response and
Notice Pursuant to CPLR 2103(5) (Service via Fax)**

KELLER, O'REILLY & WATSON, P.C.

Attorneys for Defendant
JOHN LEPPARD, M.D.
242 Crossways Park West
Woodbury, New York 11797
(516) 496-1919

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contents contained in the annexed document are not frivolous.

Dated: March 28, 2000

Signature: _____

Print Signer's Name: SCOTT C. WATSON, ESQ

Service of a copy of the within is hereby admitted.
Dated: _____

.....
Attorney(s) for

PLEASE TAKE NOTICE

☐ **NOTICE OF ENTRY** that the within is a (certified) true copy of a _____
entered in the office of the clerk of the within named Court on _____ 19____

☐ **NOTICE OF SETTLEMENT** that an Order of which the within is a true copy will be presented for settlement to the Hon. _____
one of the judges of the within named Court,
at _____
on _____ 19____, at _____ M.

Dated:

KELLER O'REILLY & WATSON, P.C.
Attorneys for

To:

Attorney(s) for